GEORGE JOHN v. GOH ENG WAH BROS. FILEM SDN. BHD. & 2 ORS.

[O.C.J. (Lim Beng Choon J.) July 8, 1987]

[Alor Setar — Originating Motion No. 32-19-87]

Administrative Law — Order of certiorari — Leave to apply for — Ex parte application — Whether applicant has locus standi to apply for leave — Whether Senior Federal Counsel has locus standi to oppose — Principles applicable — Requirements for application for leave — R.H.C. 1980, O.53, r. 1(2) — Cinematograph Films (Censorship) Act 1952 (Act 35), ss. 12A & 19C.

The applicant has made an *ex parte* application for leave to apply for an order of certiorari to quash the decision of the second respondent, Board of Film Censors, in approving the film publicity material bearing the title "Happy Bigamist" and a certain statement in the advertisement of the film which conveyed the message "two wives in one house policy feasible" and which was published, displayed and advertised by the first respondent to promote their showing of the film. The applicant also prayed for an injunction to restrain the first respondent, their servants or agents from publishing, displaying or in any way utilizing the said film publicity material.

The third respondent was added as a party pursuant to certain rules under the Cinematograph Films (Censorship) Act 1952 (Act 35).

At the hearing, the learned Senior Federal Counsel challenged the *locus standi* of the applicant in the present proceeding. Likewise, the applicant also challenged the "standing" of the learned Senior Federal Counsel.

Held, dismissing the objections: (1) in order to have the *locus standi* to invoke the jurisdiction of judicial review, the applicant should claim, if not a legal or equitable right, at least a sufficient interest in respect of the matter to be litigated. The extent of sufficient interest depends on diverse variable factors such as the content and intent of the statute of which contravention is alleged, the nature of the breaches of statutory power, the specific circumstances of the case, the nature and extent of the applicant's interest or grievance and the nature and extent of the prejudice or injury suffered by him;

(2) this court was satisfied that: (i) the applicant is a rate-payer, (ii) he had contracted a monogamous marriage, and (iii) he strongly adheres to the sanctity of a monogamous marriage which has the backing of an Act of Parliament, namely, the Law Reform (Marriage and Divorce) Act 1976. The applicant therefore has a standing to challenge the decision of the second respondent and the endorsement of the said decision by the third respondent at least at this threshold stage of his application for leave;

(3) the opposition to the *locus standi* of the learned Senior Federal Counsel has no merit;

(4) in addition the applicant has also sufficiently made up a case (at least at the threshold stage) which shows that in approving the film publicity materials, the second and third respondents had failed to take into consideration that the said materials bearing the title "Happy Bigamist" and the advertising message of "two wives in one house policy feasible" would have the effect of depraving the sanctity of a monogamous marriage; indeed the said material has the tendency to promote bigamy which in law is offensive.

Per curiam: On principle and authority, the court is of the view that at this stage of the proceeding the court is required only to inquire whether the matter to be decided by the court is not in fact frivolous and vexatious in the sense that it is a trivial complaint of an administrative error by a busybody with a misguided sentiment and misconception of the law. Another requirement at this stage of the proceeding which a court has to consider is that the applicant must produce sufficient evidence to sustain a *prima facie* case that a public officer or authority that made the decision had acted unlawfully or that he or it had, in its exercise of the administrative discretion, acted *ultra vires* the power given to him or it under the relevant statute. If the court is satisfied that the applicant has complied with these two requirements, leave would usually be granted irrespective of whether the applicant has suffered no greater injury than thousands of the King's subjects.

Cases referred to:

(1) *Blackburn* v. *Attorney-General* [1971] 1 W.L.R. 1037.
(2) *R.* v. *Greater London Council ex parte Blackburn* [1976] 3 All E.R. 184.
(3) *Attorney General (on the relation of McWhirter)* v. *Independent Broadcasting Authority* [1973] 1 All E.R. 689.
(4) *Gouriet* v. *Union of Post Office Workers & Ors.* [1977] 3 All E.R. 70.
(5) *Inland Revenue Commissioners* v. *National Federation of Self-Employed and Small Businesses Ltd.* [1981] 2 All E.R. 93.
(6) *R.* v. *H.M. Treasury* [1985] 1 All E.R. 589.
(7) *Lim Cho Hock* v. *Speaker, Perak Legislative Assembly* [1979] 2 M.L.J. 85.
(8) *Lim Cho Hock* v. *Government of the State of Perak & Ors.* [1980] 2 M.L.J. 148.
(9) *Mohamed b. Ismail* v. *Tau Sri Haji Othman Saat* [1982] 2 M.L.J. 133.
(10) *Tan Sri Haji Othman Saat* v. *Mohamed bin Ismail* [1982] 2 M.L.J. 177.
(11) *Fertilizer Corporation Kamgar Union* v. *Union of India* A.I.R. 1981 S.C. 344.
(12) *People's Union for Democratic Rights* v. *Central Government of India & Ors.* A.I.R. 1982 S.C. 1473.

ORIGINATING MOTION.

George John for the applicant.

P. Mahalingam (Senior Federal Counsel) for the second and third respondents.

Cur. Adv. Vult.

Lim Beng Choon J.: This is an *ex parte* application made by way of notice of motion for leave pursuant to Order 53 rule 1(2) of the Rules of the High Court 1980 to apply for an order of certiorari to quash the decision of the second respondent in approving the film publicity material bearing the title "Happy Bigamist" and a certain statement in

the advertisement of the film which conveyed the message "two wives in one house policy feasible" and which was published, displayed and advertised by the first respondent to promote their showing of the film. The applicant also prays for an injunction to restrain the first respondent, their servants or agents from publishing, displaying or in any way utilizing the said film publicity material. The third respondent was made a party because under section 12A of the Cinematograph Films (Censorship) Act 1952 (Act 35) he was responsible in endorsing the approval given by the second respondent. Furthermore under section 19C of the Act, the third respondent is empowered to give directions to the second respondent and others who are responsible for carrying out their respective duties conferred by the Act. The applicant has also prayed for an extension of time to make the application for leave since the approval of the second respondent was purported to have been given at diverse dates from April 24 to May 5, 1987 and the application was not filed in the court until July 8, 1987 by which time the statutory period of six weeks as provided in Order 53 rule 1A had already lapsed. The application is supported by a statement and an affidavit (enclosure 1) in compliance with Order 53 rule 1(2) and notice of the application for leave was duly given to the Attorney General's Chambers on June 24, 1987. A supplementary affidavit (enclosure 5) was filed on July 7, 1987 by the applicant but apparently it was not served on the Attorney General until July 8, 1987 when the motion came up for hearing. However, the learned Senior Federal Counsel who appeared at the hearing on behalf of the Attorney General did not make an issue regarding the short service of the supplementary affidavit and at any rate the supplementary affidavit is really not very material since the deponent of the said affidavit (and that is the applicant himself) merely used it to show this court that he had made a complaint to the Biro Pengaduan Awam and he was informed by letter dated July 1, 1987 which was received by the applicant on July 6, 1987 that the complaint of the applicant could not be entertained. Hence, he has no other venue to air his grievances except the court.

As stated earlier, on the date of hearing of the motion that is on July 8, 1987, a Senior Federal Counsel of the Attorney General appeared on his behalf. At the outset, the Senior Federal Counsel indicated to this court that he was instructed to oppose the application on the ground that the applicant had no *locus standi* to make the application. The applicant, who appeared on his own behalf, retorted by challenging the "standing" of the Senior Federal Counsel in his appearance at the hearing to oppose the application since it was made *ex parte*. It is not amusing that both counsel sought to challenge each other's "standing" to appear before this court as it would appear to me that generally speaking counsel seems to think that the easiest way to escape from a litigious process is to raise the issue of *locus standi* even if there is a real difficult point of law that calls for judicial decision. Be that as it may, I cannot accede to the objection of the applicant for the simple reason that an *ex parte* application merely means that such an application is permitted to be made by one party in the absence of the other. It does not preclude any person who has an interest or who may be adversely affected by the decision of the court in the matter which is to be litigated from appearing to raise any legitimate objection against or for that matter any legitimate ground in support of the application. At any rate, it is idle to challenge the standing of the learned Senior Federal Counsel to appear at this hearing to oppose the application on behalf of the Attorney General for the further reasons as stated hereinafter. It is to be noted that notice of an application for leave to apply for an order of mandamus, prohibition or certiorari must be given to the Attorney General pursuant to Order 53 rule 1(3). The reason for this requirement is obvious since the grant of leave to apply for any one of these prerogative orders will invariably have the effect of placing the public officer or authority who made the impugned decision and the member of the public who would benefit from the decision so made in a state of uncertainty as to whether he or it should proceed to implement the administrative decision while proceedings for judicial review of it are pending even though misconceived. It is therefore essential that the Attorney General should be given an opportunity to intervene to remove this uncertainty if there is good ground for him to do so in the interest of the government in particular and the public in general. On these grounds, I therefore hold that the objection of the applicant is without merit.

In his submission, the Senior Federal Counsel contended that in order to have the necessary standing to move this court the applicant must necessarily show that the decision on the second respondent caused injury or damage to any proprietary right which the applicant might have. Alternatively, the applicant must show that he had a legal or at least an equitable right in the matter to be litigated and that this right had been or would be infringed as a consequence of the decision of the second respondent. It is regrettable that the Senior

Federal Counsel was not able to assist this court with any authorities to support his contention except by making a reference to sections 44 and 45 of the Specific Relief Act 1950 (Act 137) which to my mind are not relevant to the issue raised in the motion as the provisions of the two sections deal with an application for an order which is in the nature of a mandamus and which is not the remedy with which the motion in the instant case is concerned. Nevertheless, the Senior Federal Counsel said that an analogy could be drawn from the provisions of the two sections to construe the scope of *locus standi* of an applicant who applied for any one of the prerogative remedies. With due respect, I cannot accept such a contention for the simple reason that the provisions of the sections, being specifically enacted to deal with the power of the court to grant an order of mandamus, should not and could not be arbitrarily extended to govern the power of the court to grant an order of prohibition or certiorari.

The submission of the applicant on his standing to challenge the decision of the second respondent did not go anyfurther than what he had stated in the supporting statement and affidavit. On the question of his standing to sue, he relied firstly on his status as a member of the Malaysian Bar currently holding a valid practising certificate issued under the Legal Profession Act 1976 (Act 166) and he claimed that by virtue of his status as a member of the Malaysian Bar he must subscribe to the purpose of the Malaysian Bar which, *inter alia*, is to protect and assist the public in all matters touching and ancillary or incidental to the law (see section 42(1) paragraph (g) of the Legal Profession Act 1976). Secondly, he also relied on his status as a rate-payer since he was and still is residing at 2653 Jalan Lumba Kuda, Alor Setar and he was and still is paying rates to the Majlis Perbandaran Kota Setar. Thirdly, he asserted that he, like many other non-Muslim men, had contracted a monogamous marriage and registered the same under the Law Reform (Marriage and Divorce) Act 1976. To sustain that he was and still is an aggrieved person, the applicant asserted that the second respondent was in breach of section 12A of the Cinematograph Films (Censorship) Act 1952 (Act 35) when it approved the impugned film publicity material to the first respondent. Likewise, the third respondent was in breach of the said section 12A in endorsing the approval given by the second respondent and he was also in breach of section 19C in not giving directions consistent with the said Act to the second respondent. He also asserted that the displaying, publishing and advertising of the said film publicity material by the first respondent was a deliberate show of disrespect of the law governing or regulating monogamous marriage. Furthermore, since bigamy is an offence under section "294" (should read section 494) of the Penal Code and the displaying, publishing and advertising the said film publicity material would lead members of the public to believe that bigamy was not offensive and, what is more important, bigamy could go to promote a happy family life and hence the conduct of a husband having two wives could legally be condoned.

After hearing the submissions of both counsel, I dismissed the objection raised by the learned Senior Federal Counsel and held that the applicant had sufficient standing to make this application. I may also mention that as the learned Senior Federal Counsel had indicated that he had no objection against the application for extension of time, the application was accordingly allowed.

At the outset, it is very significant to take note that the application in the instant proceeding is not one for an order of certiorari but rather for leave to apply for such an order. On principle and authority, I am of the view that at this stage of the proceeding, the court is required only to inquire whether the matter to be decided by the court is not in fact frivolous and vexatious in the sense that it is a trivial complaint of an administrative error by a busybody with a misguided sentiment and misconception of the law. Another requirement at this stage of the proceeding which a court has to consider is that the applicant must produce sufficient evidence to sustain a *prima facie* case that a public officer or authority that made the decision had acted unlawfully or that he or it had in its exercise of the administrative discretion acted *ultra vires* the power given to him or it under the relevant statute. If the court is satisfied that the applicant has complied with these two requirements, leave would usually be granted irrespective of whether the applicant has suffered no greater injury than thousands of the King's subjects. In support of my proposition, it would be helpful to refer to some English authorities regarding the question of *locus standi*. The first case I would like to refer to is *Blackburn* v. *Attorney General*.[1] In that case the plaintiff brought two actions against the Attorney General claiming declarations to the effect that by signing the Treaty of Rome Her Majesty's Government would irreversibly surrender in part the sovereignty of the Crown in Parliament and in so doing would be

acting in breach of the law. The Divisional Court of England upheld the order of the master striking out the statement of claim as disclosing no reasonable cause of action. On appeal to the Court of Appeal, it was held that since the courts could not impugn the treaty-making power of the Crown but could only interpret laws that had been enacted by Parliament, the statement of claim disclosed no cause of action. Accordingly, the appeal was dismissed. Nevertheless, Lord Denning M.R. (as he then was) made an observation, albeit *obiter*, regarding the *locus standi* of Mr. Blackburn. In his observation his Lordship said at p. 1041:

"A point was raised as to whether Mr. Blackburn has any standing to come before the court. That is not a matter which we need rule upon today. He says that he feels very strongly and that it is a matter in which many persons in this country are concerned. *I would not myself rule him out on the ground that he has no standing.*" (Emphasis is mine.)

Mr. Blackburn no doubt had shown eternal vigilance in support of the law as a few years later he again applied to the court for an order of prohibition preventing the Greater London Council from acting *ultra vires* by delegating the powers of censorship to the British Board of Film Censors and by allowing, contrary to the law, films that were indecent to be publicly shown. (This case is reported as *R.* v. *Greater London Council, ex parte Blackburn*[2].) Once again, the respondent challenged the standing of Mr. Blackburn to move the court for the order of prohibition. In holding that Mr. Blackburn had *locus standi*, Lord Denning said at pp. 191-192:

"On this point, I would ask: who then can bring proceedings when a public authority is guilty of a misuse of power? Mr. Blackburn is a citizen of London. His wife is a ratepayer. He has children who may be harmed by the exhibition of pornographic films. If he has no sufficient interest, no other citizen has. I think he comes within the principle which I stated in *Attorney-General (on the relation of McWhirter)* v. *Independent Broadcasting Authority*, which I would recast today so as to read: 'I regard it as a matter of high constitutional principle that, if there is good ground for supposing that a government department or a public authority is transgressing the law, or is about to transgress it, in a way which offends or injures thousands of Her Majesty's subjects, then any one of those offended or injured can draw it to the attention of the courts of law and seek to have the law enforced, and the courts in their discretion can grant whatever remedy is appropriate.'

The application of Mr. Blackburn and Mr. McWhirter did much good. They show how desirable such a principle is. One remedy which is always open, by leave of the court, is to apply for a prerogative writ, such as certiorari, mandamus or prohibition. These provide a discretionary remedy and the discretion of the court extends to permitting an application to be made by any member of the public: see *R.* v. *Thames Magistrates' Court, ex parte Greenbaum* and especially what was said by Parker L.J. and *R.* v. *Hereford Corpn, ex parte Harrower;* though it will refuse it to a mere busybody who is interfering in things which do not concern him: see *R.* v. *Paddington Valuation Officer, ex parte Peachey Property Corpn. Ltd.*"

The third case I would like to refer to is *Attorney General (on the relation of McWhirter)* v. *Independent Broadcasting Authority.*[3] In that case Mr. McWhirter as a member of the public had filed a writ in which he sought an injunction against the Independent Broadcasting Authority, a statutory body, to restrain them from broadcasting a pornographic film. Once again the *locus standi* of Mr. McWhirter was attacked particularly on the ground that since the Attorney General had refused to take any action against the respondent, Mr. McWhirter could not institute an action on his own. The matter came before Lord Denning once more and in holding that Mr. McWhirter had the necessary standing to come to the court, his Lordship made some pointed remarks regarding the scope of *locus standi* which I am reproducing here but shorn of unnecessary verbiage:

"In such a situation I am of the opinion – and I state it as a matter of principle – that the citizen who is aggrieved has a *locus standi* to come to the courts. He can at least seek a declaration ... In the light of all these, I am of the opinion that in the last resort if the Attorney General refuses leave in a proper case or improperly or unreasonably delays in giving leave or his machinery works too slowly then a member of the public who has a sufficient interest can himself apply to the court itself ... In these days when government departments and public authorities have such powers and influence, this is a most important safeguard for the ordinary citizens of this country; so that they can see that those great powers and influence are exercised in accordance with law." (*ibid* at p. 698).

I must, however, mention that the remarks of Lord Denning in the *McWhirter* case were strongly criticised by Lord Wilberforce in *Gouriet* v. *Union Post Office Workers*[4]. Nonetheless it is worthy of notice that Lord Denning's remarks were resurrected by Lord Diplock in the case of *Inland Revenue Commissioners* v. *National Federation of Self-Employed and Small Businesses Ltd.*[5] when his Lordship gave his stamp of approval on the passage of the judgment of Lord Denning in the *Ex parte Blackburn* case (which I have cited above) which was nothing more than a recast of the remarks made by Lord Denning in the *McWhirter* case.

It would appear from the authorities cited above that in 1976, the English Court of Appeal

had cut the Gordian's knot which had hitherto prevented the English courts from giving a wider interpretation of the scope of *locus standi*. However, the liberal trend engineered by the judicial philosophy of Lord Denning appears to have received a set-back in the decision of the House of Lords in *Gouriet* v. *Union of Post Office Workers & Ors.*[4] In that case, Mr. Gouriet sought the Attorney General's fiat for proceedings to restrain the union from breaking the law by interrupting the flow of mail to South Africa. The Attorney General refused his consent. Mr. Gouriet then asserted that his refusal was unlawful as an abuse of discretionary power and that he was entitled to bring proceedings for an injunction in his own name, despite his lack of any special interest in the flow of mail. The House of Lords denied his claims, holding that the courts lacked jurisdiction to question the Attorney General's discretion in deciding whether to lend his name to a relator action. The House also held that a private citizen who lacked *locus standi* (at least for an injunction although one may question whether Mr. Gouriet had a sufficient interest to apply for judicial review) *could not apply for an injunction to restrain a threatened breach of the criminal law except by way of a relator action.* It should be noted that the decision of the House in the *Gouriet* case was on the narrow grounds that since the relator action consisted of a suit brought in the public interest by a private individual or group that otherwise would have no *locus standi* but which sued with the consent or fiat of the Attorney General, the latter retained a controlling power over the entire process of the action and the relief sought must be such as to benefit the public or at least a section of the public. Despite the seemingly re-tightening of the liberalized rules of standing, staunchly advocated by Lord Denning, by the decision of the House in the *Gouriet* case, nonetheless four years later, Lord Diplock in his judgment in the *Inland Revenue Comrs.* v. *National Federation of Self-Employed* vindicated Lord Denning's liberal approach not only by endorsing the passage of Lord Denning's judgment in *R.* v. *Greater London Council, ex parte Blackburn* (see pp. 104-105 of the *National Federation of Self-Employed* case), which passage I have cited above, but also by lending countenance to the need of liberating the old and narrow technical rules of *locus standi* when he said at p. 107:

"It would, in my view, be a grave lacuna in our system of public law if a pressure group, like the federation, or even a single public spirited taxpayer, were prevented by outdated technical rules of *locus standi* from bringing the matter to the attention of the court to vindicate the rule of law and get the unlawful conduct stopped. The Attorney-General, although he occasionally applies for prerogative orders against public authorities that do not form part of central government, in practice never does so against government departments. It is not, in my view, a sufficient answer to say that judicial review of the actions of officers or departments of central government is unnecessary because they are accountable to Parliament for the way in which they carry out their functions. They are accountable to Parliament for what they do so far as regards efficiency and policy, and of that Parliament is the only judge; *they are responsible to a court of justice for the lawfulness of what they do, and of that the court is the only judge.*" (My emphasis)

Furthermore, his Lordship went on to draw a vital distinction between the *Gouriet* case and the *National Federation of Self-Employed* case when he said at pp. 102j to 103:

"As respects the claim for a declaration considerable reliance was placed on the recent decision of this House in *Gouriet* v. *Union of Post Office Workers* [1977] 3 All E.R. 70, [1978] A.C. 435, which held that a private citizen, except as relator in an action brought by the Attorney-General, has no *locus standi* in private law as plaintiff in a civil action to obtain either an injunction to restrain another private citizen (*in casu* a trade union) from committing a public wrong by breaking the criminal law or a declaration that his conduct is unlawful unless the plaintiff can show that some legal or equitable right of his own has been infringed or that he will sustain some special damage over and above that suffered by the general public. This decision is, to my view, irrelevant to any question that your Lordships have to decide today. The defendant trade union in deciding to instruct its members to take unlawful industrial action was not exercising any governmental powers; it was acting as a private citizen and could only be sued as such in a civil action under private law. It was not amenable to any remedy in public law. Lord Wilberforce and I were at pains to draw this distinction."

However, the majority of the Law Lords in holding that the Federation had not shown sufficient interest and hence no standing to sue seemed to link the question of "standing" to the merits of the case. "Standing" was to be determined by examining at the same time the powers and duties of the deciding body and the nature of the alleged breaches of the law by that body before it could be determined whether the applicant had sufficient interest (see the speech of Lord Wilberforce at p. 98hj, that of Lord Scarman at p. 113fh and that of Lord Roskill at p. 117dg). Therefore it appears to me that the Law Lords seemed to hold the view that unless the court is satisfied that the applicant's interest is very tenuous and he is no more than a busybody or a crank who tries to interfere with the decision of a public officer when the decision does not in any way affect his personal "interest" in which case his application can be thrown out *in limine*, it is incumbent on the

court to look at the illegality committed by the deciding body and the nature of the illegal act regardless of whether the applicant's interest in the matter to be litigated is very strong or only questionable. In my attempt to analyse the decision of the House, I have not lost sight of the fact that it was made after Order 53 of the English Rules of Supreme Court had been amended by the introduction of a new sub-rule (5) to rule 3 of that Order which came into effect on January 1, 1978. The relevant part of the new sub-rule (5) reads as follows:

"The court shall not grant leave unless it considers that the applicant has a *sufficient interest* in the matter to which the application relates ..." (my emphasis)

It was, however, held by the Law Lords that the Order 53 in its amended form was introduced to simplify procedure and did not affect the substantive law or the requirement to show *locus standi*. The following passage from the speech of Lord Diplock at p. 103 of the *National Federation of Self-Employed* case is sufficient to illustrate this point:

"The rules as to 'standing' for the purpose of applying for prerogative orders, like most of English public law, are not to be found in any statute. They were made by judges; by judges they can be changed, and so they have been over the years to meet the need to preserve the integrity of the rule of law despite changes in the social structure, methods of government and the extent to which the activities of private citizens are controlled by government authorities that have been taking place continuously, sometimes slowly sometimes swiftly, since the rules were originally propounded. Those changes have been particularly rapid since the 1939-45 war. *Any judicial statements on matters of public law if made before 1950 are likely to be a misleading guide to what the law is today.*" (My emphasis) (See also the speech of Lord Wilberforce at p. 97D).

Notwithstanding the majority decision of the House in the *National Federation of Self-Employed* case, the liberal approach on the question of *locus standi* adopted by Lord Diplock seems to gain strength. This can be seen in the more recent case of *R.* v. *H.M. Treasury*[6] where Slade L.J. said at p. 595gj:

"The speeches of their Lordships in *IRC* v. *National Federation of Self-Employed and Small Businesses Ltd.* [1981] 2 All E.R. 93, [1982] A.C. 617 well illustrate that there has been what Lord Roskill described as a 'change in legal policy' (see [1981] 2 All E.R. 93 at 116, [1982] A.C. 617 at 656), which has in recent years greatly relaxed the rules as to *locus standi*. Lord Diplock referred to a 'virtual abandonment' of the former restrictive rules as to the *locus standi* of persons seeking prerogative orders against authorities exercising governmental powers (see [1981] 2 All E.R. 93 at 104, [1982] A.C. 617 at 640). If the court had taken the view that Mr Smedley's application was of a frivolous nature, the wide discretion given to it by RSC Ord 53 would have enabled it to dispose of it appropriately. There has, however, been no suggestion that it is of this nature. It raises a serious question as to the powers of Her Majesty in Council to make an Order in Council in the form of the draft now before Parliament. The making of any such order would be likely to be followed automatically by the expenditure by the government of substantial sums from the Consolidated Fund in reliance on section 2 of the European Communities Act 1972. I do not feel much doubt that Mr Smedley, *if only in his capacity as a taxpayer,* has sufficient *locus standi* to raise this question by way of an application for judicial review; on the present state of the authorities, I cannot think that any such right of challenge belongs to the Attorney-General alone." (My emphasis)

I shall now turn to explore the local cases on this issue. In this connection, it is sufficient to start with the case of *Lim Cho Hock* v. *Speaker, Perak Legislative Assembly.*[7] There the applicant moved the court by way of an originating summons to seek the determination of the court on seven questions. However, before the hearing the applicant applied by summons-in-chambers to amend the application by deleting two of the questions. As a result the only material issue before the court was whether the respondent in failing to take the prerequisite oath as a member of the Legislative Assembly had forfeited his seat as a member for Belanja, and the court was asked for a declaratory order to that effect. It could hardly be disputed and indeed it was conceded by counsel for the applicant that the application presented in the form of an originating summons was in effect seeking a declaratory order under Order 54A rule 1A of the Rules of the High Court 1957. Eusoffe Abdoolcader J. (as he then was) in dismissing the application held that the proceedings by originating summons were incompetent as they did not come within the requirements of Order 54A rule 1A. One of the requirements was that an applicant who sought a declaratory order under Order 54A rule 1A must assert that his legal or equitable right was dependent on the proper construction of a statutory provision. This the applicant failed to do. Thus his Lordship said at p. 87:

"On the question of the applicant's standing to sue under Order 54A rule 1A, the provision that he must claim or assert a 'legal or equitable right' seems to imply that under that rule he must satisfy more rigorous requirements as to *locus standi* than a plaintiff in an action under Order 25 rule 5 who need only establish that *his legal interests are peculiarly affected.*" (My emphasis).

It would appear from this decision that at least prior to 1980, the scope of the *locus standi* of an applicant who applied for any of the preroga-

tive orders was beset with the narrow technical rules of *locus standi* followed by the English judges up to and during the first half of this century. However, a year later in *Lim Cho Hock* v. *Government of the State of Perak & Ors.*[8] Eusoffe Abdoolcader J. (as he then was) in holding that the applicant, a rate-payer, had sufficient *locus standi* to sue for a declaration that the Mentri Besar of the State of Perak could not hold at the same time the office of the President of the Municipality of Ipoh has this to say about *locus standi:*

"There seems in recent time to have been signs of a change in judicial attitudes directed to a more liberal rather than the restricted scope of individual standing hitherto adopted. In *Thorson* v. *Attorney-General for Canada (No. 2)* and *Nova Scotia Board of Censors* v. *McNeil,* the Supreme Court of Canada allowed individuals as citizens and taxpayers to challenge the constitutionality of certain types of legislation. These two cases in effect make the *locus standi* question discretionary where the interest of compelling public bodies to observe and obey the law can be served ..." (p. 150H)

His Lordship then went on to discuss Lord Denning's approach in the two *Blackburn* cases and the decision of the Court of Appeal in the *National Federation of Self-Employed* case[5] to illustrate the liberalizing of the narrow technical rules which used to restrict the scope of *locus standi.* In 1982, the decision of Wan Yahaya J. in *Mohamed b. Ismail* v. *Tan Sri Haji Othman Saat*[9] witnessed a dramatic liberation of access to the courts for the purpose of obtaining prerogative orders against persons and authorities exercising governmental powers. Thus his Lordship said at p. 136:

"Public interests demand that a wider and more liberal construction be given to the class of persons who could qualify as having a right or interest to such a remedy. In our courts the mendicant may in appropriate circumstances challenge the act of a Minister if the exercise of such act appears to be unlawful, or against public interest. *I would hold that the English authorities on the subject of 'sufficient interest' in a judicial review equally apply to our courts."* (My emphasis)

At the Federal Court (*Tan Sri Haji Othman Saat* v. *Mohamed b. Ismail*[10]), Eusoffe Abdoolcader J. (as he then was) endorsed the concept of liberalizing the scope of individual standing. His Lordship reaffirmed the concept laid down by the court in *Lim Cho Hock* v. *Government of the State of Perak & Ors.*[8] when he said at p. 179:

"Even if the law's pace may be slower than society's march, what with increased and increasing civic-consciousness and appreciation of rights and fundamental values in the citizenry, it must nonetheless strive to be relevant if it is to perform its function of peaceful ordering of the relations between and among persons in society, and between and among persons and government at various levels. It would not perhaps be inapt to aphorize that the idle and whimsical plaintiff, a *dilettante* who litigates for a lark, is a spectre which haunts the legal literature, not the courtroom. In the United States of America, where standing rules are relatively lax, it has been found that although the gates have been open there has been no food."

However, the final remarks made by his Lordship appeared to cause some consternation amongst lawyers who seemed to think that by that remark his Lordship "resiled from this liberal 'public interest litigation' view". (See the article on "Public Interest Litigation" by En. Gurdial Singh Nijar published in [1983] 2 C.L.J. 234 at 236.) I beg to differ with the statement of the writer of that article. I may be pardoned in saying that his Lordship has eminently endorsed the modern trends of the English courts to liberalize the technical rules which hitherto had emanciated the scope of *locus standi* in all his judgments touching on this matter. His Lordship has never countenanced the giant steps taken by the Indian Supreme Court of India since 1980 towards facilitating the institution of "public interest litigation". The concept of "public interest was litigation" was said to have first been mooted by the Indian Supreme Court in *Fertilizer Corporation Kamgar Union* v. *Union of India*[11]. The judgment of Krishna Iyer J. (*ibid* at 350) had no doubt influenced greatly the Indian judicial thinking on the concept of public interest litigation. In justifying this concept, Krishna Iyer J. said at p. 354:

"Law, as I conceive it, is social auditor and this audit function can be put into action when someone with real *public interest* ignites the jurisdiction."

However, it was not until 1982 that the concept of public interest litigation gained a firm foothold in the Supreme Court of India when some workers of various projects relating to the Asian Games complained of violation of certain labour laws and conveyed their complaints by letter to Bhagwati J. Nevertheless, the complaints were entertained by the Supreme Court of India in a writ petition later instituted in the name of the *People's Union for Democratic Rights* v. *Central Government of India & Ors.*[12] In characterising the petition as a public interest litigation Bhagwati J. said:

"We wish to point out with all the emphasis at our command that public interest litigation which is a strategic arm of the legal aid movement and which is intended to bring justice within the reach of the masses ... is a totally different kind of litigation from the ordinary traditional litigation which is essentially of an adversary character where there is a dispute between two parties."

No doubt the concept of public interest litigation as propagated by the Indian Supreme Court is highly favoured by some local lawyers, both practising lawyers and academicians. It is, however, irrelevant as to whether this court shares their sentiments because of the doctrine of *stare decisis*. The scope of *locus standi* as propounded by our courts up to date can be summarised in this way: In order to have the *locus standi* to invoke the jurisdiction of judicial review, the applicant should claim, if not a legal or equitable right, at least sufficient interest in respect of the matter to be litigated. The extent of sufficient interest depends on diverse variable factors such as the content and intent of the statute of which contravention is alleged, the nature of the breaches of the statutory power, the specific circumstances of the case, the nature and extent of the applicant's interest or grievance and the nature and extent of the prejudice or injury suffered by him.

Transposing the principles of law as discussed above to the present case, this court is satisfied that as (i) the applicant is a rate-payer, (ii) and that he had contracted a monogamous marriage, and (iii) he strongly adheres to the sanctity of a monogamous marriage which has the backing of an Act of Parliament, namely, the Law Reform (Marriage and Divorce) Act 1976, the applicant has a standing to challenge the decision of the second respondent and the endorsement of the said decision by the third respondent at least at this threshold stage of his application for leave. Pausing for a moment to make an observation, it is to be noted that I have not taken into consideration whether the applicant's status as a member of the Malaysian Bar could or should be taken into account to support "his standing to sue". Nevertheless in passing and without deciding I do not think that a member of the Malaysian Bar can depend solely on his status to gain a greater privilege than any other ordinary member of the public in the matter of "standing to sue". In addition, the applicant has also sufficiently made up a case (at least at the threshold stage) which shows that in approving the film publicity materials in question under section 12A of the Cinematograph Films (Censorship) Act 1952 (Act 35), the second and third respondents had failed to take into consideration that the said materials bearing the title "Happy Bigamist" and the advertising message of "two wives in one house policy feasible" would have the effect of depraving the sanctity of a monogamous marriage; indeed the said material has the tendency to promote bigamy which in law is offensive. Hence he contended that the said respondents had acted in violation of the powers conferred on them by the said 1952 Act, and such violation is prejudicial or causes injury to his personal interest and that of a section of the public sanctifying the fundamental concept of "one man one wife". For these reasons, I am satisfied that his "standing to sue" cannot seriously be challenged at least at the threshold stage when he is only applying for leave. It may well be that in considering the substantive application for an order of certiorari, this court may decide to reject the application based on whatever materials the respondents may furnish this court such as the legality of their policy decision, or that in exercising the discretionary powers conferred on them under the 1952 Act they were not in breach of any of the provisions of the said Act or that their decision is not amenable to an order of certiorari to quash the same. When all these matters are before this court, I would then be in a position to consider whether the applicant can properly invoke the jurisdiction of this court for an order of certiorari.

In the circumstances, I dismiss the objection raised by the Senior Federal Counsel.

Order accordingly.

Solicitors: *George John & Co.*

RE SENSON AUTO SUPPLIES SDN. BHD.

[O.C.J. (Edgar Joseph Jr. J.) July 7, 1987]

[Penang – Companies Winding-up No. 42-23-86]

Companies and Corporations – Winding up – Petition for – Oppression – Just and equitable ground – Companies Act 1965, ss. 181 & 218(1)(i).

In this case a petition was presented by four individuals for the winding up of Senson Auto Supplies Sdn. Bhd. ("the Company") under section 181 of the Companies Act 1965, on the ground that the affairs of the Company were being conducted in a manner oppressive to them. During the argument, however, counsel for the petitioners also relied upon the just and equitable ground under section 218(1)(i) of the Act.

Held, dismissing the appeal: (1) the words "just and equitable" in section 218(1)(i) of the Companies Act enable the court to subject the exercise of legal rights to equitable considerations, that is to say, considerations of a personal character arising from one individual and another which may render it unjust or inequitable to insist on legal rights or to exercise them in a particular way;

(2) even if the directors or majority shareholders have been guilty of improper or unreasonable conduct so